IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 2790 of 2004
And
CIVIL APPLICATION NO 9563 of 2004

For Approval and Signature:

HON'BLE MISS JUSTICE R.M.DOSHIT
and
HON'BLE MR.JUSTICE S.R.BRAHMBHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GUJARAT STATE ROAD TRANSPORT CORPORATION

Versus

KIRTANBHAI MULJIBHAI PATEL

Appearance:
1. First Appeal No. 2790 of 2004
MR HARDIK C RAWAL for Appellant No.
MR MURALI N DEVNANI for Respondent No. 1

CORAM : HON'BLE MISS JUSTICE R.M.DOSHIT
and
HON'BLE MR.JUSTICE S.R.BRAHMBHATT

Date of decision: 24/02/2005

ORAL JUDGEMENT

(Per : HON'BLE MISS JUSTICE R.M.DOSHIT)

1. Admit. Mr. Devnani waives service of notice of admission.

2. This appeal has been preferred by the Gujarat State Road Transport Corporation (hereinafter referred to as the "Corporation") against the judgment and award dated 5th April, 2004 passed by the Commissioner For Workman's Compensation & Labour Judge, Nadiad in Workman's Compensation Case No. 19 of 1993 for the injury received by the workman in discharge of duty. The workman has been awarded compensation in sum of Rs.14,664=00.

3. It was the claim of the workman that on 19th January, 1987 he was put in possession of bus no: GRR-8085 on Anand - Dakor route. On reaching Dakor at around 9.30 in the evening he allowed the passengers to get down near the gate and carried the bus in the workshop. After parking the bus in the workshop and switching off the engine he got down from the bus. However the engine of the bus started unexpectedly and the bus started rolling. He, therefore, tried to get into the rolling bus to stop it. In the process he received the injury in question. The claim of the workman was contested by the appellant Corporation. According to the Corporation the workman was negligent in bringing the bus in the workshop with the passengers and getting down without switching off the ignition. Besides the bus was parked on a slop without applying handbrake. Thus the injury in question was caused on account of the negligence of the workman.

4. We find that though there was a specific defence of negligence on the part of the workman taken by the appellant Corporation the Commissioner below has not framed issue whether the injury in question was caused on account of the negligence of the workman. Nor the Commissioner below has recorded a finding whether the workman was guilty of negligence as alleged.

5. In above view of the matter the appeal is allowed. The Workman's Compensation Case No. 19 of 1993 is remanded to the Commissioner of Workman's Compensation And Labour Court, Nadiad. On remand the Commissioner for Workman's Compensation shall frame a specific issue whether the injury in question was caused to the workman

due to his negligence and shall record specific finding on the said issue. The Corporation shall be entitled to lead further evidence in connection with the said issue and the workman shall be entitled to lead evidence in rebuttal. In view of the said finding the Commissioner shall determine the liability of the Corporation to pay compensation to the workman afresh. Pending the decision afresh the amount of compensation awarded shall be invested in fixed deposit in a nationalised bank.

6. Civil application stands disposed off.

Dt: 24-2-2005 [MS. R.M. DOSHIT, J]

[S.R. BRAHMBHATT, J]

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